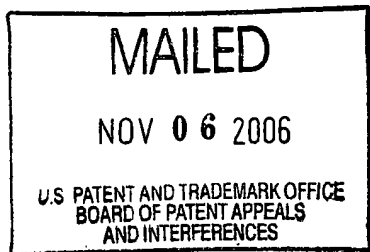


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: Hans Bruder

Appeal No. 2005-1694
Application No. 10/030,818

HEARD: October 20, 2005

Before FRANKFORT, PATE, and MCQUADE, Administrative Patent Judges.
PATE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 10-18. These are the only claims in the application. The claimed invention is directed to a supporting profile for erecting a temporary structure. The claimed invention may be further understood with reference to claim 10 as it appears in the appendix to appellant's brief.

THE REFERENCES

The references of record relied upon by the examiner as evidence of anticipation and obviousness are:

Summers	2,538,483	Jan. 16, 1951
Monti et al. (Monti)	4,410,157	Oct. 18, 1983

THE REJECTIONS

Claims 10-16 stand rejected under 35 U.S.C. § 102 as anticipated by Monti.

Claims 17 and 18 stand rejected under 35 U.S.C. § 103 as unpatentable over Monti in view of Summers.

For the details of these rejections and the examiner's view point on appellant's arguments reference is made to the examiner's answer. For appellant's response in regard to these rejections reference is made to the brief and reply brief.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellant and the examiner. As a result of this review, we have determined that claims 10-16 do not lack novelty over the Monti reference. We have further determined that claims 17 and 18 are not unpatentable over Monti in view of Summers. Our reasons follow.

The examiner has rejected claims 10-16 under section 102 as anticipated by Monti. According to the examiner, Monti discloses an elongated hollow body 14A with an external longitudinal groove, unnumbered. The elongated body has a first end shown facing upwardly in Figure 3. Presumably, it has a second end on a lower portion not

depicted in the figure. An adapter piece 46 is inserted in the first end and secured to the first end of the elongated body. The adapter has a triangular recess 58 and a T-shaped slot for reception of a T-bolt 82 to secure the end of another elongated member. Finally, the examiner is reading the disk-shaped end piece of claim 10 on the disk shaped portion of end piece 46 mounted to the upper elongated hollow body 14B shown in Figure 3.

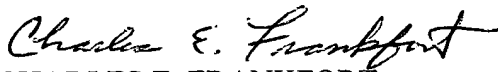
The claim requires the disk-shaped end piece to be “disposed at the first end and connected to the adapter piece, wherein the disk-shaped end piece is mounted on a face of the hollow body and is fastened to the adapter piece by fasteners.” This limitation has engendered arguments about whether the disk-shaped member on 14B “belongs” to the lower supporting profile or whether elongated hollow body 14A “includes” or “comprises” the upper disk-shaped member 46. Arguably, the disk-shaped portion of the end cap 46 of elongated hollow body 14B is disposed at, or at least near, the first end of the hollow body 14A. And arguably the disk shaped portion of upper adapter 46 is fastened to the adapter in elongated hollow body 14A using the T-shaped fastener 82. However, the elongated hollow body, as defined in the first clause of the claim, was hollow body 14A. The only manner in which the disk-shaped member, upper end cap 46, can be said to be mounted on supporting profile 14A is through the agency of the other adapter on the end of supporting profile 14A, another end cap 46. The upper end cap 46 on profile 14B is not mounted on a *face* of hollow body 14A. It is, in fact, mounted on the face of an entirely different hollow body--14B. Therefore, we hold that the upper end cap 46 is mounted on upper hollow elongated body 14B and mounted on lower end cap 46 and is not mounted on a face of lower elongated hollow member 14A. In short, the Monti end cap that the examiner has labeled as 200 (answer, page 3) is mounted on the

lower adapter 46, which adapter 46 is mounted to a face of supporting profile 14A.

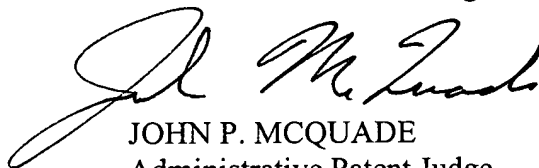
Accordingly, Monti is not seen as anticipatory of claim 10.

Inasmuch as claim 10 is not anticipated by the Monti reference, we are constrained to reverse both the section 102 and section 103 rejections on appeal, based as they are on the Monti reference.

REVERSED


CHARLES E. FRANKFORT
Administrative Patent Judge


WILLIAM F. PATE, III
Administrative Patent Judge


JOHN P. MCQUADE
Administrative Patent Judge

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